

*HSLRB* means the Homeland Security Labor Relations Board.

*Labor organization* means an organization composed in whole or in part of Federal employees, in which employees participate and pay dues, and which has as a purpose the dealing with the Department concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by the Department; or

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

*Management official* means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

*Professional employee* has the meaning given that term in 5 U.S.C. 7103(a)(15).

*Supervisor* means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

#### § 9701.505 Coverage.

(a) *Employees covered.* This subpart applies to eligible DHS employees, subject to a determination by the Secretary or designee under § 9701.102(b), except as provided in paragraph (b) of this section. DHS employees who would otherwise be covered by 5 U.S.C. chapter 71 are eligible for coverage under this subpart. In addition, this subpart applies to an employee whose employment has ceased because of an unfair labor practice under § 9701.517 of this subpart and who has not obtained any other regular and substantially equivalent employment.

(b) *Employees excluded.* This subpart does not apply to—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A member of the uniformed services as defined in 5 U.S.C. 2101(3);

(3) A supervisor or a management official;

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311;

(5) Employees of the United States Secret Service, including the United States Secret Service Uniformed Division;

(6) Employees of the Transportation Security Administration; or

(7) Any employee excluded pursuant to § 9701.514 or any other legal authority.

#### § 9701.506 Impact on existing agreements.

(a) Any provision of a collective bargaining agreement that is inconsistent with this part and/or its implementing directives is unenforceable on the effective date of coverage under the applicable subpart or directive. In accordance with procedures and time limits established by the HSLRB under § 9701.509, an exclusive representative may appeal to the HSLRB the Department's determination that a provision is unenforceable. Provisions that are identified by the Department as unenforceable remain unenforceable unless held otherwise by the HSLRB on appeal. The Secretary or designee, in his or her sole and exclusive discretion, may continue all or part of a particular provision(s) with respect to a specific category or categories of employees